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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,978

09/23/2003

Nurettin Burcak Beser

0023-0099

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44987 7590 01/18/2011

HARRITY & HARRITY, LLP  
11350 Random Hills Road  
SUITE 600  
FAIRFAX, VA 22030

EXAMINER

CHEA, PHILIP J

ART UNIT

PAPER NUMBER

2492

MAIL DATE

DELIVERY MODE

01/18/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NURETTIN BURCAK BESER

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Appeal 2009-007634  
Application 10/667,978  
Technology Center 2400

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Before, ROBERT E. NAPPI, ELENI MANTIS MERCADER, and  
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup>The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1, 3-8, 10-31, and 34. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part the Examiner's rejection of these claims.

### INVENTION

The invention is directed to method and system of registering and initializing cable modems in a prioritized order after a system failure or power surge. *See Spec: 2-3*. Claim 1 is representative of the invention and reproduced below:

1. A method of allocating upstream resources to a plurality of cable modems, comprising:
  - grouping the plurality of cable modems into a plurality of groups based on quality of service requirements of each of the cable modems;
  - ordering allocation of said upstream resources to each of the plurality of cable modems based on the group to which each of the cable modems belongs; and
  - allocating said upstream resources to each of the cable modems based on the ordering.

### REFERENCES

Fijolek	US 6,553,568 B1	Apr. 22, 2003
Zadikian	US 6,912,221 B1	Jun. 28, 2005 (filed Jan. 4, 2000)

### REJECTIONS AT ISSUE

Claims 1 and 3-5 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fijolek. Ans. 2-3.

Claims 6-31 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fijolek in view of Zadikian. Ans. 3-6.

## ISSUES

### *Claim 1*

Appellant argues on pages 6-9 of the Appeal Brief that the Examiner's rejection of claim 1 is in error. Appellant argues that Fijolek does not disclose ordering allocation of upstream resources based on each cable modem's group and allocating upstream resources based on the ordering. App. Br. 7.

Thus, with respect to claim 1, Appellant's contention presents us with the issue: Did the Examiner err in finding that Fijolek discloses ordering allocation of upstream resources to each of a plurality of cable modems based on a group to which each of the cable modems belongs, and allocating upstream resources to each of the cable modems based on the ordering?

### *Claims 6-7*

Appellant argues on page 13 of the Appeal Brief that the Examiner's rejection of claims 6-7 is in error. Claims 6 and 7 are dependent upon claim 1. Appellant argues that these claims are allowable based upon their dependency on claim 1 and since Zadikian does not remedy the deficiencies of Fijolek. App. Br. 13. Thus, with respect to claims 6-7, Appellant's contention presents us with the same issue as claim 1.

*Claim 3*

Appellant argues on pages 9-10 of the Appeal Brief that the Examiner's rejection of claim 3 is in error. Claim 3 is dependent upon claim 1. Appellant makes the same arguments with respect to claim 3 as with claim 1. App. Br. 9. Additionally, Appellant argues that Fijolek does not disclose "assigning initialization channels of the upstream resources to each of the plurality of cable modems based on the groupings of the plurality of cable modems." App. Br. 10.

Thus, with respect to claim 3, Appellant's contention presents us with the same issues as claim 1 and one additional issue: Did the Examiner err in finding that Fijolek discloses assigning initialization channels of the upstream resources to each of the plurality of cable modems based on the groupings of the plurality of cable modems?

*Claim 4*

Appellant argues on pages 10-11 of the Appeal Brief that the Examiner's rejection of claim 4 is in error. Claim 4 is dependent upon claim 1. Appellant makes the same arguments with respect to claim 4 as with claim 1. App. Br. 10. Additionally, Appellant argues that Fijolek does not disclose "assigning registration channels of the upstream resources to each of the plurality of cable modems based on the groupings of the cable modems." App. Br. 11.

Thus, with respect to claim 4, Appellant's contention presents us with the same issues as claim 1 and the additional issue: Did the Examiner err in finding that Fijolek discloses assigning registration channels of the upstream

resources to each of the plurality of cable modems based on the groupings of the cable modems?

*Claim 5*

Appellant argues on pages 11-12 of the Appeal Brief that the Examiner's rejection of claim 5 is in error. Claim 5 is dependent upon claim 1. Appellant makes the same arguments with respect to claim 5 as with claim 1. App. Br. 11. Additionally, Appellant argues that Fijolek does not disclose "that a first group of the plurality of groups comprises message transferring agents." App. Br. 12.

Thus, with respect to claim 5, Appellant's contention presents us with the same issue as claim 1 and the additional issue: Did the Examiner err in finding that Fijolek discloses that a first group of the plurality of groups comprises message transferring agents?

*Claims 8, 13, and 14*

Appellant argues on pages 13-15 of the Appeal Brief that the Examiner's rejection of claims 8, 13, and 14 is in error. Appellant selects claim 8 as representative of the group comprising claims 8, 13, and 14. App. Br. 15. Appellant argues that Fijolek and Zadikian do not disclose allocating upstream resources in a determined order. App. Br. 13-14.

Thus, with respect to claims 8, 13, and 14, Appellant's contention presents us with the issue: Did the Examiner err in finding that Fijolek and Zadikian disclose determining an order for allocating upstream resources to each of the plurality of CMs based on the group to which each of the CMs belong?

*Claims 10 and 11*

Appellant argues on pages 15-17 of the Appeal Brief that the Examiner's rejection of claims 10 and 11 is in error. Appellant argues that claims 10 and 11 should be allowed for the same reasons as the claim from which it depends. App. Br. 15 and 16. Also, Appellant makes the same arguments as with respect to claim 3. App. Br. 16 and 17.

Thus, with respect to claim 10, Appellant's contentions present us with the same issues as claims 3 and 8.

*Claim 12*

Appellant argues on pages 17-18 of the Appeal Brief that the Examiner's rejection of claim 12 is in error. Appellant argues that claim 12 should be allowed for the same reasons as claim 8. App. Br. 17. Additionally, Appellant makes the same arguments with respect to claim 12 as with claim 5.

Thus, with respect to claim 12, Appellant's contentions present us with the same issues as claims 5 and 8.

*Claims 15-19, 20-22 and 24, and 34*

Appellant argues on pages 18-19, 20-21, and 25-26 that the Examiner's rejection of claims 15-19, claims 20-22 and 24, and claim 34 is in error. Appellant selects claim 15 as representative of the group comprising claims 15-19 (App. Br. 19), claim 20 as representative of the group comprising claims 20-22 and 24 (App. Br. 21), and claim 34 by itself (App. Br. 25). Appellant makes the same argument with respect to claim 15, 20, and 34 as with respect to claim 8.

Thus, with respect to claims 15-29, 20-22 and 24, and 34, Appellant's contentions present us with the same issues as claim 8.

*Claims 25-28 and 31 and claim 29*

Appellant argues on pages 22-26 that the Examiner's rejection of claims 25-28 and 31 and claim 29 is in error. Appellant argues that Fijolek and Zadikian do not determine an order of assigning upstream channels based on data retrieved from upstream channel requests. App. Br. 23. Additionally, Appellant argues that claim 29 should be allowed based upon its dependency on claim 27. App. Br. 24.

Thus, with respect to claims 25-28 and 31 and claim 29, Appellant's contentions present us with the same issue as claim 27 and the additional issue: Did the Examiner err in finding that Fijolek and Zadikian discloses determining an order in which to assign upstream channels to each of a plurality of modems based on data retrieved from initial upstream channel requests?

ANALYSIS

*Claim 1*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 1. Claim 1 requires ordering upstream resources to be allocated to each of the cable modems, based on each cable modem's group. Appellant argues that Fijolek does not disclose this limitation because "specifying a maximum rate limit for a connection" is not the same as ordering an allocation of resources. App. Br. 8. We disagree.



First, the Examiner interprets “allocating” as “distributing according to plan.” Ans. 6. Since Appellant has not provided a specific definition for the term “allocating,” we find the Examiner’s interpretation to be reasonable. Second, the Examiner finds that Fijolek’s cable modems are grouped according to a quality of service. Ans. 6. Each of these groups has an upstream speed associated with it, to which the Examiner interprets as an upstream resource. Ans. 6-7. For instance, the Biz Gold group is “allocated” a speed of 512K. Ans. 6. The Premium group is allocated a speed of 40k. Ans. 6. Thus, the Examiner finds that Fijolek discloses the claimed limitation since Fijolek discloses allocating a transmission rate, up to a maximum rate limit, to a particular cable modem based upon the cable modem’s group. Ans. 7. As such, we do not find Appellant’s arguments to be persuasive.

Appellant additionally argues that Fijolek does not teach an upstream speed, but rather the capability of transmitting at a higher speed. App. Br. 8-9. We do not find this argument to be persuasive since the ability to have a higher upstream speed is still an allocated resource. As such, we sustain the Examiner’s rejection of claim 1.

#### *Claims 6-7*

Appellant’s arguments have not persuaded us of error in the Examiner’s rejection of claims 6-7. Claims 6-7 depend upon claim 1. Appellant’s arguments present the same issues discussed above with respect to independent claim 1. App. Br. 13. Therefore, we sustain the Examiner’s rejection of claims 6-7 for the reasons discussed *supra* with respect to claim 1.

*Claim 3*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 3. Claim 3 recites "assigning initialization channels of the upstream resources to each of the plurality of cable modems based on the grouping of the plurality of cable modems." Claim 3 is dependent upon claim 1. Appellant presents the same arguments discussed above with respect to claim 1. App. Br. 9. Therefore, we do not find Appellant's previously presented arguments to be persuasive for the same reasons as we stated above.

Appellant's additional argument that Fijolek does not disclose assigning initialization channels is also not persuasive. App. Br. 10. The Examiner interprets a channel as a network address. Ans. 7. Appellant's Specification does not contain a specific definition for the term "channel." As a result, we find the Examiner's interpretation to be reasonable. The channel disclosed in Fijolek is initially assigned in response to a request. Ans. 7. Therefore, Fijolek does disclose assigning an initialization channel. Thus, we sustain the Examiner's rejection of claim 3.

*Claim 4*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 4. Claim 4 recites "assigning registration channels of the upstream resources to each of the plurality of cable modems based on the grouping of the plurality of cable modems." Claim 4 is dependent upon claim 1. Appellant presents the same arguments discussed above with respect to claim 1. App. Br. 10. Therefore, we do not find

Appellant's previously presented arguments to be persuasive for the same reasons as we stated above.

Appellant's additional argument that requesting a specific IP address, as disclosed in Fijolek, is not the same as assigning registration channels. App. Br. 11. As disclosed above, the Examiner interprets a channel as a network address which includes an IP address. Ans. 8. Therefore, since Fijolek discloses assigning an IP address in response to a request, Fijolek discloses assigning registration channels. Since Appellant has not responded to the Examiner's finding we do not find Appellant's argument to be persuasive. As a result, we sustain the Examiner's rejection of claim 4.

*Claim 5*

Appellant's arguments have persuaded us of error in the Examiner's rejection of claim 5. Claim 5 recites "wherein a first group of the plurality of groups comprises message transferring agents." Appellant's initial argument that claim 5 should be allowed for the same reasons as claim 1 is not persuasive. However, Appellant's additional argument is persuasive. The Examiner finds that a TSI message is a message transferring agent. Ans. 8. Appellant argues that Fijolek does not disclose a group that comprises message transferring agents. App. Br. 12. We concur with Appellant since the Examiner has not sufficiently disclosed how a TSI message is the same as a message transferring agent. Thus, we will not sustain the Examiner's rejection of claim 5.

*Claims 8, 13, and 14*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 8. Claim 8 recites "determining an order for

allocating upstream resources to each of the plurality of CMs based on the group to which each of the CMs belongs.” Appellant argues that Zadikian restores failed connections based on the particular quality of service of the CMs. App. Br. 14. This is not the same as determining an order for allocating upstream resources since a connection is not an upstream resource. App. Br. 14. We disagree.

Appellant does not supply sufficient evidence to support the argument that a connection is not an upstream resource. Additionally, not only does the Examiner find that Zadikian discloses restoring connections that have the highest priority first (Ans. 8.), but Fijolek discloses assigning priority to the different service level agreements (Col. 18, ll. 43-45), wherein the service level agreements are how the CMs are grouped (Ans. 6.) Thus, the combination of Zadikian’s priority restoration of connections based upon Fijolek’s CM groupings discloses the claimed limitation. As a result, we sustain the Examiner’s rejection of claim 8 and claims 13 and 14 that have been grouped with claim 8.

#### *Claims 10 and 11*

Appellant’s arguments have not persuaded us of error in the Examiner’s rejection of claims 10 and 11. Claims 10 and 11 are dependent upon claim 8. Appellant’s arguments present the same issues discussed with respect to claim 8. App. Br. 15-16. Additionally, Appellant’s arguments present the same issues discussed with respect to claim 3. App. Br. 16-17. Therefore, we sustain the Examiner’s rejection of claims 10 and 11 for the reasons discussed *supra* with respect to claims 3 and 8.

*Claim 12*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 12. Claim 12 is dependent upon claim 8. Appellant's arguments present the same issues discussed above with respect to claim 8. App. Br. 17. Additionally, Appellant's arguments present the same issues discussed with respect to claim 5. Therefore, we sustain the Examiner's rejection of claim 12 for the reasons discussed *supra* with respect to claims 5 and 8.

*Claims 15-19, 20-22 and 24, and 34*

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claims 15, 20, and 34. Claims 15, 20, and 34 contain similar limitations discussed *supra* with respect to claim 8. Appellant's arguments present the same issues discussed *supra* with respect to claim 8. App. Br. 18, 20, and 25. Therefore, we sustain the Examiner's rejection of claims 15, 20, and 34, and claims 16-19, and claims 21-22 and 24 that are grouped with claims 15 and 20 (respectively) for the reasons discussed *supra* with respect to claim 8.

*Claims 25-28 and 31 and claim 29*

Appellant's arguments have persuaded us of error in the Examiner's rejection of to claims 25-28 and 31 and claim 29. Claim 25 recites "determining an order in which to assign upstream channels to each of the plurality of modems based on the retrieved first data." Claims 26-28 and 31 and claim 29 depend from claim 25. Appellant argues that neither Fijolek nor Zadikian discloses an upstream channel request from which first data is retrieved. We concur with Appellant. The Examiner has not addressed this

argument in either the rejection or in the Examiner's Answer. Therefore, we will not sustain the Examiner's rejection of claims 25-28 and 31 and claim 29.

## CONCLUSION

The Examiner did not err in finding that Fijolek discloses ordering allocation of upstream resources to each of a plurality of cable modems based on a group to which each of the cable modems belongs, and allocating upstream resources to each of the cable modems based on the ordering.

The Examiner did not err in finding that Fijolek discloses assigning initialization channels of the upstream resources to each of the plurality of cable modems based on the groupings of the plurality of cable modems.

The Examiner did not err in finding that Fijolek discloses assigning registration channels of the upstream resources to each of the plurality of cable modems based on the groupings of the cable modems.

The Examiner erred in finding that Fijolek discloses that a first group of the plurality of groups comprises message transferring agents.

The Examiner did not err in finding that Fijolek and Zadikian disclose determining an order for allocating upstream resources to each of the plurality of CMs based on the group to which each of the CMs belong.

The Examiner erred in finding that Fijolek and Zadikian discloses determining an order in which to assign upstream channels to each of a plurality of modems based on data retrieved from initial upstream channel requests.

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Application 10/667,978

### SUMMARY

The Examiner's decision to reject claims 1, 3-4, 6-24, and 34 is affirmed. The Examiner's decision to reject claims 5 and 25-31 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).

### AFFIRMED-IN-PART

ELD

HARRITY & HARRITY, LLP  
11350 RANDOM HILLS ROAD  
SUITE 600  
FAIRFAX, VA 22030